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SEYFARTH SHAW LLP				
131 S. DEARBORN ST., SUITE 2400				
CHICAGO, IL 60603-5803				
EXAMINER				
PARADISO, JOHN ROGER				
ART UNIT		PAPER NUMBER		
3721				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/582,320

Applicant(s)

BRASH, KENNETH GEORGE

Examiner

John Paradiso

Art Unit

3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10, 13-17, 24-30, 32-37, 40-44 and 74-103 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 13-17, 24-30, 32-37, 40-44 and 74-103 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1-10, 13-17, 24-30, and 32-37, 40-44, 74-103 are rejected under 35 U.S.C. 103(a) as being unpatentable over SAVUR ET AL (WO 183317 A1) in view of OTSUKI ET AL (JP 08322449-A), as set forth in paragraph 3 of the previous Office Action and reprinted below for convenience:

SAVUR ET AL discloses a method and apparatus for transporting perishables inside a shipping container (see page 34 and Fig. 1) including a door (14).

SAVUR ET AL does not disclose means or method for removing residual gas from the container through the door.

OTSUKI ET AL discloses a mobile fumigation system positioned within at least one ISO general purpose shipping container (container van 1) comprising a first gas-tight compartment including a fumigation chamber (10); a second compartment (9) including a fumigation apparatus (12) operatively coupled to the fumigation chamber (see Fig. 1); and a partition wall (3) separating the first and second compartments; a fumigant inlet device (21, 13) operatively coupled to the fumigation chamber through the partition wall to allow a fumigant (C02) into the fumigation chamber (10); an extraction device (14) operatively coupled to the fumigation

chamber and arranged to remove a majority of the fumigant from the fumigation chamber (see Figs. 2-4); an absorption means (35) operatively coupled to the extraction device (via interconnection of the parts into an assembly) and being designed to absorb the fumigant removed from the fumigation chamber (35 performs the function of absorbing ethylene which is circulating within the container; no particular fumigant or absorption means being particularly claimed). Also disclosed is a system control box containing a plurality of floor and wall-mounted pipes (see pipes between each of 14-17, 19, & 35 and apertures in 5, 6) independently connected via a system of taps and connectors to a fumigant sampling and detection meter unit (17 connected to the pipes via the interconnected closed loop system; no particular structural configuration being claimed) located in the second compartment (9). The system control box (25) containing a fumigant sampling and detection meter unit (17) and power supply switches for mixing fans, exhaust fan (14), lights (inherently there are light indicators on a control panel), gas heaters (26), and valve actuators (for 18, 22, 23).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of SAVUR ET AL by adding the means and method for removing residual gas from the container through the door, as taught by OTSUKI ET AL, in order to remove the gas and byproducts completely from the container thus providing less need for consumables (such as charcoal) and increasing the capacity of the system for removing residual gas.

Response to Arguments

3. Applicant's arguments filed 5/18/2010 have been fully considered but they are not persuasive.
4. Applicant states on page 13 of his Response that "These claims are readily distinguishable from the cited art because: The claims recite that the gasses pass into and out of the conventional shipping container, whom OTSUKI teaches that the gases are recycled and kept wholly within the container, merely exchanged between internal compartments of the container."

However, Fig. 1 of SAVUR ET AL shows a container, including a door (14):

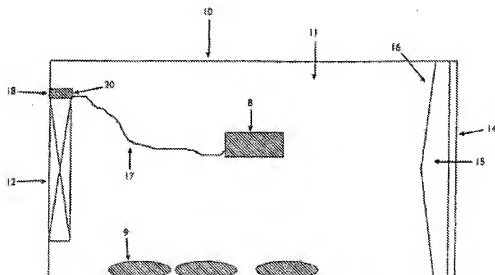
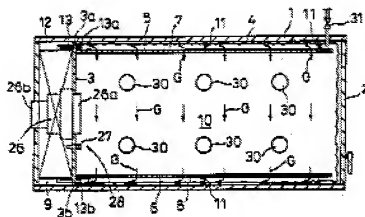


FIG 1

The rejection explains the modification of SAVUR with the teaching of OTSUKI ET AL. The first gas-tight compartment of OTSUKI ET AL (shown below would be analogous to the container of SAVUR ET AL.

【図 1】



Examiner notes that it is the combination of the two references that comprise the rejection, not OTSUKI ET AL alone.

5. Applicant states on page 13-14 of his Response that “The claims recite that an end door of the container is opened, whereas both OTSUKI and SAVUR teach the end doors should remain closed.”

However, both OTSUKI ET AL and SAVUR ET AL have end doors, which would inherently be opened during any process that involved loading or unloading material into the container.

6. Applicant states on page 14 of his Response that “The claims recite that a panel with a gas inlet/outlet is attached to the door opening at an end of the container, not internal to and spaced away from the end as taught by OTSUKI. SAVUR does not disclose or suggest this feature either. The present claims to not recite dividing the container internally by the panel. Further, the Of-flee Action's characterization of the partition in OTSUKI as a panel coupled to the end door opening of the container, as recited in the present claims, is completely incorrect as the partition in OTSUKI is not positioned at the recited location.”

However, as explained above, the rejection explains the modification of SAVUR with the teaching of OTSUKI ET AL. The first gas-tight compartment of OTSUKI ET AL would be analogous to the container of SAVUR ET AL. Examiner notes that it is the combination of the two references that comprise the rejection, not OTSUKI ET AL alone.

7. Applicant states on page 14 of his Response that “Resultantly, the panel in OTSUKI is permanently located within the container. OTSUKI does not teach a panel that can practically be attached to every single container that arrives in a port for decontamination, and then removed; as is practically achieved with the present invention.”

However, while the practicality has been well-explained by Applicant, Examiner notes that during patent examination of the claims, the pending claims must be given their broadest reasonable interpretation consistent with the specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005). See also MPEP § 2111. Moreover, while the claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not

the mode of claim interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their terms reasonably allow. In re Am. Acad. of Sci. Tech Ctr., 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). See also MPEP § 2111.01.

In this case, the instant claims, as recited, read on the combination of OTSUKI ET AL and SAVUR ET AL, as detailed in the rejection above.

8. Applicant states on page 14 of his Response that “The Office Action alleges that extraction of at least some of the residual gas present in the container inherently happens when the door is opened. But in the case of SAVUR and OTSUKI, extraction of at least some of the residual gas present in the container can not inherently happen when the door is opened. SAVUR teaches the end doors of the container should be closed and furthermore there is a fluid impervious curtain 16 to seal the door to prevent leakage and thus gas flow through the doors (page 17 line 29 - page 18 line 19). Air is extracted from the container at the opposite end to the doors through port 18. SAVUR positively teaches in an opposite way from extracting residual gas through the container end door opening..”

However, as explained above, both OTSUKI ET AL and SAVUR ET AL have end doors, which would inherently be opened during any process that involved loading or unloading material into the container.

9. Applicant states on page 14 of his Response that “The whole point of OTSUKI and SAVUR are to seal the container very well to keep the gases inside to control the internal atmosphere. Flushing is contrary to the teaching of either prior art documents.”

However, as explained above, both OTSUKI ET AL and SAVUR ET AL have end doors, which would inherently be opened during any process that involved loading or unloading material into the container.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Paradiso. The examiner can normally be reached Monday-Friday, 9:30 p.m. – 6:00 p.m. (ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada, can be reached at the number listed below.

Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Technology Center Receptionist.

/John Paradiso/

Examiner John Paradiso: (571) 272-4466

December 15, 2010

/Rinaldi I Rada/

Supervisory Patent Examiner, Art Unit 3721

Additional Phone Numbers:

Supervisor Rinaldi Rada: (571) 272-4467

Fax (Official): (571) 273-8300

Fax (Direct to Examiner) (571) 273-4466 (Drafts only)